

**U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:18-cv-01688-BAH**

CENTER FOR REPRODUCTIVE RIGHTS et al v. U.S.
DEPARTMENT OF HEALTH & HUMAN SERVICES
Assigned to: Chief Judge Beryl A. Howell
Cause: 05:552 Freedom of Information Act

Date Filed: 07/19/2018
Jury Demand: None
Nature of Suit: 895 Freedom of
Information Act
Jurisdiction: U.S. Government Defendant

Plaintiff

**CENTER FOR REPRODUCTIVE
RIGHTS**

represented by **Susan Booth Cassidy**
COVINGTON & BURLING LLP
850 Tenth Street N.W.
One City Center
Washington, DC 20001
202-662-5348
Email: scassidy@cov.com
ATTORNEY TO BE NOTICED

William McAuliffe
COVINGTON & BURLING LLP
850 Tenth Street N.W.
One City Center
Washington, DC 20001
(202) 662-5717
Email: wmcauliffe@cov.com
ATTORNEY TO BE NOTICED

Plaintiff

**NATIONAL WOMEN'S LAW
CENTER**

represented by **Susan Booth Cassidy**
(See above for address)
ATTORNEY TO BE NOTICED

William McAuliffe
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

**U.S. DEPARTMENT OF HEALTH &
HUMAN SERVICES**

represented by **Brian J. Field**
U.S. ATTORNEY'S OFFICE FOR THE
DISTRICT OF COLUMBIA
555 Fourth Street, NW
Washington, DC 20530
(202) 252-2551
Fax: (202) 234-2806
Email: brian.field@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

April Denise Seabrook
U.S. ATTORNEY'S OFFICE FOR THE
DISTRICT OF COLUMBIA
555 Fourth Street, NW
Washington, DC 20530
(202) 252-2525
Fax: (202) 252-2599
Email: april.seabrook@usdoj.gov

TERMINATED: 04/25/2019

Marsha Wellknown Yee
U.S. ATTORNEY'S OFFICE FOR THE
DISTRICT OF COLUMBIA
555 Fourth Street, NW
Washington, DC 20530
(202) 252-2539
Fax: (202) 252-2599
Email: marsha.yee@usdoj.gov
TERMINATED: 09/13/2018

Date Filed	#	Docket Text
07/19/2018	<u>1</u>	COMPLAINT against All Plaintiffs (Filing fee \$ 400 receipt number 0090-5596151) filed by CENTER FOR REPRODUCTIVE RIGHTS, NATIONAL WOMEN'S LAW CENTER. (Attachments: # <u>1</u> Exhibit A – January 26 2018 FOIA Request, # <u>2</u> Exhibit B – February 22 2018 HHS Letter, # <u>3</u> Exhibit C – March 5 2018 FOIA Request, # <u>4</u> Exhibit D – March 6 2018 HHS Letter, # <u>5</u> Civil Cover Sheet, # <u>6</u> Summons to HHS, # <u>7</u> Summons to DCUSA, # <u>8</u> Summons to USAG)(McAuliffe, William) (Entered: 07/19/2018)
07/19/2018	<u>2</u>	LCvR 7.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by CENTER FOR REPRODUCTIVE RIGHTS (McAuliffe, William) (Entered: 07/19/2018)
07/19/2018	<u>3</u>	LCvR 7.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by NATIONAL WOMEN'S LAW CENTER (McAuliffe, William) (Entered: 07/19/2018)
07/20/2018		Case Assigned to Chief Judge Beryl A. Howell. (zsb) (Entered: 07/20/2018)
07/23/2018	<u>4</u>	SUMMONS (3) Issued Electronically as to U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES, U.S. Attorney and U.S. Attorney General (Attachment: # <u>1</u> Notice and Consent)(zsb) (Entered: 07/23/2018)
07/27/2018	<u>5</u>	STANDING ORDER. Signed by Chief Judge Beryl A. Howell on July 27, 2018. (lcbah3) (Entered: 07/27/2018)
08/02/2018	<u>6</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 7/30/2018. Answer due for ALL FEDERAL DEFENDANTS by 8/29/2018. (McAuliffe, William) (Entered: 08/02/2018)
08/02/2018	<u>7</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on United States Attorney General. Date of Service Upon United States Attorney General 7/30/2018. (McAuliffe, William) (Entered: 08/02/2018)
08/02/2018	<u>8</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES served on 7/27/2018 (McAuliffe, William) (Entered: 08/02/2018)
08/16/2018	<u>9</u>	NOTICE of Appearance by Marsha Wellknown Yee on behalf of U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES (Yee, Marsha) (Entered: 08/16/2018)
08/29/2018	<u>10</u>	ANSWER to Complaint by U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES.(Yee, Marsha) (Entered: 08/29/2018)
09/12/2018	<u>11</u>	Joint STATUS REPORT and Proposed Schedule by U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES. (Seabrook, April) (Entered: 09/12/2018)
09/12/2018		MINUTE ORDER (paperless) DIRECTING, upon consideration of the parties' <u>11</u> Joint Status Report, the parties to file, by October 9, 2018, a joint status report recommending a schedule for further proceedings. Signed by Chief Judge Beryl A. Howell on September 12, 2018. (lcbah3) (Entered: 09/12/2018)

09/12/2018		Set/Reset Deadlines: Joint Status Report due by 10/9/2018. (tg) (Entered: 09/12/2018)
09/13/2018	<u>12</u>	NOTICE OF SUBSTITUTION OF COUNSEL by April Denise Seabrook on behalf of All Defendants Substituting for attorney Marsha Yee (Seabrook, April) (Entered: 09/13/2018)
09/25/2018	<u>13</u>	NOTICE of Appearance by Susan Booth Cassidy on behalf of All Plaintiffs (Cassidy, Susan) (Entered: 09/25/2018)
10/09/2018	<u>14</u>	Joint STATUS REPORT <i>and Proposed Schedule</i> by CENTER FOR REPRODUCTIVE RIGHTS, NATIONAL WOMEN'S LAW CENTER. (McAuliffe, William) (Entered: 10/09/2018)
10/09/2018		MINUTE ORDER (paperless) DIRECTING, upon consideration of the parties' <u>14</u> Joint Status Report and Proposed Schedule, the parties to file, by November 9, 2018, a joint status report proposing a schedule to govern further proceedings. Signed by Chief Judge Beryl A. Howell on October 9, 2018. (lcbah3) (Entered: 10/09/2018)
10/10/2018		Set/Reset Deadlines: Joint Status Report due by 11/9/2018. (tg) (Entered: 10/10/2018)
11/09/2018	<u>15</u>	NOTICE of Appearance by Brian J. Field on behalf of All Defendants (Field, Brian) (Entered: 11/09/2018)
11/09/2018	<u>16</u>	Joint STATUS REPORT by U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES. (Field, Brian) (Entered: 11/09/2018)
11/13/2018		MINUTE ORDER (paperless) DIRECTING, upon consideration of the parties' <u>16</u> Joint Status Report and Proposed Schedule, the parties to file, by December 10, 2018, a joint status report advising the Court whether any disputes remain between the parties and, if so, a proposed schedule to govern further proceedings. Signed by Chief Judge Beryl A. Howell on November 13, 2018. (lcbah3) (Entered: 11/13/2018)
11/13/2018		Set/Reset Deadlines: Joint Status Report due by 12/10/2018. (tg) (Entered: 11/13/2018)
12/10/2018	<u>17</u>	Joint STATUS REPORT by U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES. (Field, Brian) (Entered: 12/10/2018)
12/10/2018		MINUTE ORDER (paperless) DIRECTING, upon consideration of the parties' <u>17</u> Joint Status Report and Proposed Schedule, the parties to file, by January 11, 2019, a joint status report advising the Court whether any disputes remain between the parties and, if so, a proposed schedule to govern further proceedings. Signed by Chief Judge Beryl A. Howell on December 10, 2018. (lcbah3) (Entered: 12/10/2018)
12/11/2018		Set/Reset Deadlines: Joint Status Report due by 12/11/2018. (tg) (Entered: 12/11/2018)
01/10/2019	<u>18</u>	Unopposed MOTION for Extension of Time to File <i>Joint Status Report</i> by CENTER FOR REPRODUCTIVE RIGHTS, NATIONAL WOMEN'S LAW CENTER (McAuliffe, William) (Entered: 01/10/2019)
01/10/2019		MINUTE ORDER (paperless) GRANTING the plaintiffs' <u>18</u> Unopposed Motion to Extend Deadline to File Joint Status Report. Accordingly, the January 11, 2019 deadline for the parties to file a joint status report, set forth in the Court's December 10, 2018 Minute Order, is extended until February 8, 2019. Signed by Chief Judge Beryl A. Howell on January 10, 2019. (lcbah3) (Entered: 01/10/2019)
01/11/2019		Set/Reset Deadlines: Joint Status Report due by 2/8/2019. (tg) (Entered: 01/11/2019)
02/08/2019	<u>19</u>	Joint STATUS REPORT by U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES. (Field, Brian) (Entered: 02/08/2019)
02/11/2019		MINUTE ORDER (paperless) DIRECTING, upon consideration of the parties' <u>19</u> Joint Status Report and Proposed Schedule, the parties to file, by March 8, 2019, a joint status report advising the Court whether any disputes remain between the parties and, if so, a proposed schedule to govern further proceedings. Signed by Chief Judge Beryl A. Howell on February 11, 2019. (lcbah3) (Entered: 02/11/2019)
02/11/2019		Set/Reset Deadlines: Joint Status Report due by 3/8/2019. (tg) (Entered: 02/11/2019)

03/08/2019	<u>20</u>	Joint STATUS REPORT by CENTER FOR REPRODUCTIVE RIGHTS, NATIONAL WOMEN'S LAW CENTER. (McAuliffe, William) (Entered: 03/08/2019)
03/08/2019		MINUTE ORDER (paperless) DIRECTING, upon consideration of the parties' <u>20</u> Joint Status Report and Proposed Schedule, the parties to file, by April 12, 2019, a joint status report advising the Court whether any disputes remain between the parties and, if so, a proposed schedule to govern further proceedings. Signed by Chief Judge Beryl A. Howell on March 8, 2019. (lcbah3) (Entered: 03/08/2019)
03/11/2019		Set/Reset Deadlines: Joint Status Report due by 4/12/2019. (tg) (Entered: 03/11/2019)
04/12/2019	<u>21</u>	Joint STATUS REPORT by U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES. (Field, Brian) (Entered: 04/12/2019)
04/12/2019		MINUTE ORDER (paperless) DIRECTING, upon consideration of the parties' <u>21</u> Joint Status Report and Proposed Schedule, the parties to file, by May 10, 2019, a joint status report advising the Court whether any disputes remain between the parties and, if so, a proposed schedule to govern further proceedings. Signed by Chief Judge Beryl A. Howell on April 12, 2019. (lcbah3) (Entered: 04/12/2019)
04/12/2019		Set/Reset Deadlines: Joint Status Report due by 5/10/2019. (tg) (Entered: 04/12/2019)
04/25/2019	<u>22</u>	NOTICE OF WITHDRAWAL OF APPEARANCE as to U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES. Attorney April Denise Seabrook terminated. (Seabrook, April) (Entered: 04/25/2019)
05/10/2019	<u>23</u>	Joint STATUS REPORT by U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES. (Field, Brian) (Entered: 05/10/2019)
05/10/2019		MINUTE ORDER (paperless) DIRECTING, upon consideration of the parties' <u>23</u> Joint Status Report and Proposed Schedule, the parties to file, by June 14, 2019, and every 30 days thereafter, a joint status report advising the Court whether any disputes remain between the parties and, if so, a proposed schedule to govern further proceedings. (lcbah4) (Entered: 05/10/2019)
05/10/2019		Set/Reset Deadlines: Joint Status Report due by 6/14/2019, and every 30 days thereafter. (tg) (Entered: 05/10/2019)
06/04/2019	<u>24</u>	MOTION for Briefing Schedule by CENTER FOR REPRODUCTIVE RIGHTS, NATIONAL WOMEN'S LAW CENTER (Attachments: # <u>1</u> Exhibit A (Defendant's March 2019 Production), # <u>2</u> Exhibit B (Correspondence Between Counsel), # <u>3</u> Text of Proposed Order)(McAuliffe, William) (Entered: 06/04/2019)
06/10/2019		<p>MINUTE ORDER (paperless) DIRECTING, upon consideration of the plaintiffs' <u>24</u> Motion for a Scheduling Order, and in order to reach an expeditious resolution of this matter without resource-intensive seriatim summary judgment briefing proposed by the plaintiff, the defendant to submit, in the parties' joint status report due on June 14, 2019, responses to the following issues raised in the plaintiffs' <u>24</u> Motion:</p> <p>(1) why the defendant is unable to produce documents at a faster rate than 500 pages per month, <i>see</i> Pls.' Mot. at 4, at which rate production would not be complete until November 2021, <i>see id.</i>;</p> <p>(2) why the defendant has failed to provide a summary of searches "that were run to determine the volume of potentially responsive records," even though the defendant "agreed" to provide this summary to facilitate negotiations about which documents the defendant should prioritize for processing, <i>id.</i>;</p> <p>(3) why the defendant refuses to provide a partial <i>Vaughn</i> index "for some sample of withheld records" until the completion of production, by the plaintiffs' estimation, in two years, <i>id.</i>, when providing the bases for withholdings on a rolling basis would help facilitate negotiations between the parties; and</p> <p>(4) the defendant's position on the plaintiffs' claim that the defendant is invoking Exemption 7(A) too broadly, and improperly withholding entire pages rather than redacting reasonably segregable information, <i>id.</i> at 5 8.</p>

		Signed by Chief Judge Beryl A. Howell on June 10, 2019. (lcbah3) (Entered: 06/10/2019)
06/12/2019	<u>25</u>	Consent MOTION for Extension of Time to <i>file Joint Status Report</i> by U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES (Field, Brian) (Entered: 06/12/2019)
06/13/2019		MINUTE ORDER (paperless) GRANTING the defendant's <u>25</u> Motion to Extend, consented to by the plaintiffs. Accordingly, the deadline for the parties' joint status report is extended until June 18, 2019. Signed by Chief Judge Beryl A. Howell on June 13, 2019. (lcbah3) (Entered: 06/13/2019)
06/13/2019		Set/Reset Deadlines: Joint Status Report due by 6/18/2019. (tg) (Entered: 06/13/2019)
06/18/2019	<u>26</u>	Joint STATUS REPORT by U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES. (Field, Brian) (Entered: 06/18/2019)
06/24/2019		MINUTE ORDER (paperless) GRANTING the plaintiffs' request, in ¶ 14 of the parties' <u>26</u> Joint Status Report and Proposed Schedule, to "respond to Defendant's Responses to Court's Questions and in Opposition to <u>24</u> Plaintiffs' Motion for a Briefing Schedule." Accordingly, the plaintiffs shall file, by June 28, 2019, any such response. Signed by Chief Judge Beryl A. Howell on June 24, 2019. (lcbah3) (Entered: 06/24/2019)
06/25/2019		Set/Reset Deadlines: Plaintiffs' response to Defendant's Responses to Court's Questions and in Opposition to <u>24</u> Plaintiffs' Motion for a Briefing Schedule due by 6/28/2019. (tg) (Entered: 06/25/2019)
06/28/2019	<u>27</u>	RESPONSE re <u>26</u> Status Report filed by CENTER FOR REPRODUCTIVE RIGHTS, NATIONAL WOMEN'S LAW CENTER. (McAuliffe, William) (Entered: 06/28/2019)
07/08/2019		<p>MINUTE ORDER (paperless) GRANTING IN PART the plaintiffs' <u>24</u> Motion for a Scheduling Order ("Pls.' Mot."), in light of the parties' dispute over the extent of the defendant's withholdings under Exemption 7(A) to date, the potential to expedite resolution of this entire case with an early resolution of that Exemption 7(A) dispute, and the plaintiffs' agreement to resolve the Exemption 7(A) dispute with "a partial <i>Vaughn</i> index for some sample of withheld records." Pls.' Mot. at 4.</p> <p>Accordingly, the parties are DIRECTED as follows:</p> <p>(1) by July 18, 2019, the defendant shall produce to the plaintiffs a <i>Vaughn</i> Index for a representative sample of documents withheld, including, at least, the 130 pages withheld from the defendant's November 2018 production; and</p> <p>(2) by August 7, 2019, the parties shall submit a joint status report advising the Court whether, after review of the partial <i>Vaughn</i> index, the plaintiffs continue to request resolving, before production is complete, the parties' Exemption 7(A) dispute through cross-motions for partial summary judgment.</p> <p>In addition, the recurring 30-day Joint Status Report otherwise due in July and August, <i>see</i> Min. Order (May 10, 2019), is SUSPENDED; and the defendant is DIRECTED to "continue to process all potentially responsive records" at a rate of at least 500 pages per month and "issue interim responses to the Plaintiffs on the 5th day of each month (or on the following business day if the 5th day of a given month lands on a weekend or a federal holiday)." <u>26</u> Parties' Jt. Status Report ¶¶ 12, 18(a).</p> <p>The plaintiffs' <u>24</u> Motion is otherwise DENIED without prejudice. Signed by Chief Judge Beryl A. Howell on July 8, 2019. (lcbah3) (Entered: 07/08/2019)</p>
07/08/2019		Set/Reset Deadlines: Defendant's <i>Vaughn</i> Index due by 7/18/2019; joint status report due by 8/7/2019. (tg) (Entered: 07/08/2019)
08/07/2019	<u>28</u>	Joint STATUS REPORT by U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES. (Field, Brian) (Entered: 08/07/2019)

08/07/2019		MINUTE ORDER (paperless) DIRECTING, upon consideration of the parties' <u>28</u> Joint Status Report and Proposed Schedule, and their representation that "[a]t this time, based on the representative <i>Vaughn</i> index provided by Defendant, Plaintiffs do not continue to seek resolution of the 7(A) Exemption issues through summary judgment," <u>28</u> Jt. Status Rpt. ¶ 15, the parties to file, by September 13, 2019, a joint status report advising the Court whether any disputes remain between the parties and, if so, a proposed schedule to govern further proceedings. Signed by Chief Judge Beryl A. Howell on August 7, 2019. (lcbah3) (Entered: 08/07/2019)
08/08/2019		Set/Reset Deadlines: Joint Status Report due by 9/13/2019. (tg) (Entered: 08/08/2019)
09/13/2019	<u>29</u>	Joint STATUS REPORT by CENTER FOR REPRODUCTIVE RIGHTS, NATIONAL WOMEN'S LAW CENTER. (McAuliffe, William) (Entered: 09/13/2019)
10/11/2019	<u>30</u>	Joint STATUS REPORT by U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES. (Field, Brian) (Entered: 10/11/2019)